



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

September 1, 1994

IN REPLY PLEASE
REFER TO OUR FILE

Z-00223698

DAVID P BOYCE
5608 ELLSWORTH AVENUE
APT 7
PITTSBURGH PA 15232

BOCKETED
SEP 27 1994

DOCUMENT
FOLDER

David P. Boyce
v.
Duquesne Light Company

To Whom It May Concern:

This will advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on June 30, 1994 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

John G. Alford
Secretary

Certified Mail
Receipt Requested

JEP

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pa. 17105-3265

Public Meeting held June 30, 1994

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
John M. Quain
Lisa Crutchfield
John Hanger

DOCKETED
SEP 27 1994

David P. Boyce

Z-00223698

v.

Duquesne Light Company

**DOCUMENT
FOLDER**

OPINION AND ORDER

History of the Proceeding

On November 29, 1993, David P. Boyce ("Complainant") filed a Formal Complaint against Duquesne Light Company ("Respondent") stating that for three (3) years, the apartment above his has been responsible for high summer electric bills due to the air conditioner in the apartment building that he resides in being connected to his (the Complainant's) electric meter.

The Respondent filed a timely Answer and a Motion to Dismiss for failure to join an indispensable party, the Complainant's landlord. The Administrative Law Judge ("ALJ") deferred ruling on the Motion to the Initial Decision.

On February 7, 1994, an initial hearing was held in Pittsburgh and, on March 22, 1994, ALJ Michael A. Nemec issued an Initial Decision sustaining the Complaint in part and setting a payment schedule with any Exceptions thereto due on or before April 11, 1994.

On April 13, 1994, the Complainant filed Exceptions to the Initial Decision and on April 22, 1994, a Secretarial Letter was sent to the Complainant informing him that the Exceptions were late filed and would not be considered.

On May 16, 1994, the Complainant filed a document entitled "Response To: Administrative Law Judge 'Exception' Decision", the gist of which is to request that his late filed Exceptions be considered by the Commission.

No Reply Exceptions have been filed.

Discussion

Based on the record in this proceeding, the ALJ made the following Findings of Fact:¹

1. Complainant David P. Boyce resides at 5608 Ellsworth Avenue, Apartment 7, Pittsburgh, PA 15232, where he receives electric utility service from Duquesne Light Company.
2. Mr. Boyce has resided in the same apartment since December 31, 1990.
3. Three apartments, including that rented to Mr. Boyce, are served by the same air conditioning unit.
4. The electrical service for the compressor for the air conditioning unit is connected to the meter that registers electric service to Mr. Boyce's apartment.
5. The thermostat for controlling the air conditioner is located in an apartment other than the one rented by Mr. Boyce.
6. Mr. Boyce has been unsuccessful in obtaining the cooperation of other tenants in paying in full their respective shares of the electric bill.

¹Record references are omitted for clarity.

7. Mr. Boyce has also been unsuccessful in obtaining the cooperation of his landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, in either helping with the electric bill or in rewiring the electrical system to take the compressor off his meter.
8. Mr. Boyce's sole source of income is Supplemental Security Income in the amount of \$612 per month. He also receives food stamps in a value of about \$63.
9. Mr. Boyce's monthly expenses include rent of \$350 (which includes heat); telephone of about \$20; cable TV of about \$30; a monthly bus pass of \$40; food expense is covered by food stamps.
10. Mr. Boyce is a full-time student at the University of Pittsburgh where he has a double major in media communications and political science; he is required by his classes to have access to both a telephone and cable tv.
11. As of the hearing, the balance on Mr. Boyce's account for electric service was \$556.98. His budget amount was \$74 per month and Duquesne was willing to accept a payment plan of the budget plus \$5 per month on the arrearage.
12. Duquesne's account records confirm Mr. Boyce's testimony regarding high cooling season bills.

Based on the foregoing, the ALJ sustained the Complaint in part in recommending a payment schedule. The ALJ also notes the potential financial responsibility of the owner of the building in which the Complainant resides.

In the Initial Decision, the ALJ questions the Complainant's efforts which are directed at the Respondent to resolve the problems the Complainant is experiencing. The ALJ observed that the Respondent does not own the building, did not create the problems inherent with serving three apartments by one air conditioning unit, and has no authority under our regulations or the Public Utility Code to rewire a privately owned building. The

ALJ also briefly discusses the issue of the potential financial responsibility of the owner of the Complainant's building as it arises as a result of amendments to the Public Utility Code by Act 54 of 1993, which became effective August 31, 1993, and whether the owner should be joined as an indispensable party to the proceeding. However, the ALJ concluded that the issues raised by the Complainant against the Respondent could be resolved without the presence of the property owner.

Section 1529.1 of the Public Utility Code as amended by Act 54, 66 Pa. C.S.A. §1529.1 states as follows:

§ 1529.1. Duty of owners of rental property

(a) **Notice to public utility.** It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) **History of account.** Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) **Failure to give notice.** Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

Section 1529.1 is designed to address the problem of "foreign load" similar to that of the Complainant where tenants who have a

meter and are direct utility customers find that utility service for other tenants or for the landlord is being billed through their meter. Protracted disputes have occurred when the tenant is unwilling to pay for service to others or is unable to gain reimbursement from the other tenants or when the utility is unable to convince the landlord to alter the wiring or piping in the facility to eliminate the foreign load.

It is clear that under Section 1529.1, only individually metered units may be billed directly to a tenant and that, upon documenting a foreign load problem as described above, a utility must bill the service to the landlord. In the instant proceeding, there is no dispute as to the fact that the Complainant's meter records the air conditioning load for all the tenants and not just the Complainant. As such, under Section 1529.1, the service may be charged to the landlord since it is no longer relevant or problematic that the utility cannot remove the foreign load directly. Moreover, no notice to the landlord is technically required as Section 1529.1 makes it the landlord's duty to have utility service in his or her name whenever the unit is not individually metered.

In our opinion, it is clear that the record before us is adequate to determine that foreign load exists as a matter of fact and that the utility service should be placed in the landlord's name as a matter of law. However, it is also clear that the record does not adequately indicate what portion of the arrearage, if any, is the responsibility of the Complainant. Accordingly, we will remand this proceeding to the Office of Administrative Law Judge solely for a determination of the responsibility for the arrearages, if any; **THEREFORE,**

IT IS ORDERED:

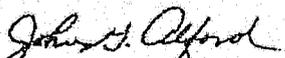
1. That the Initial Decision of the Administrative Law Judge in the above captioned proceeding be, and is hereby, remanded to

the Office of Administrative Law Judge for consideration of the issues as discussed in the body of this Opinion and Order and the issuance of an Initial Decision Upon Remand.

2. That the Respondent be, and is hereby, directed to place the service to each of the apartments in the Complainant's building in the name of the Complainant's landlord and owner of the apartment building, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, until such time as each tenant is individually metered and is responsible only for electric service to their individual apartment.

3. That the Complainant's landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, be served a copy of this Opinion and Order.

BY THE COMMISSION,


John G. Alford
Secretary

(Seal)

ORDER ADOPTED: June 30, 1994

ORDER ENTERED: SEP 1 1994

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

JUN 30 1994

DAVID P. BOYCE
V.
DUQUESNE LIGHT COMPANY

PUBLIC MEETING - JUNE 30, 1994
JUN-94-OSA-153*
DOCKET NO. 2-00223698

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MOTION OF COMMISSIONER JOHN HANGER

For many years, landlords provided dwelling units which were not separately metered, and included utility service as part of the rent. In recent years, the trend has been to meter separately individual dwelling units so that the tenant becomes the customer of the utility and is directly responsible for the utility bill.

In these recent years, the Commission often has been faced with Complaints from tenants who have a meter and are direct utility customers but who claim that utility service for other tenants or for the landlord is being billed through their meter. Protracted disputes have occurred when the tenant is unwilling to pay for service to others or is unable to gain reimbursement from them, as well as when the utility has been unable to convince the landlord to change the wiring or piping in the facility.

Last year, the General Assembly enacted Section 1529.1 of the Public Utility Code which should eliminate many of these problems. Under this new law, only individually metered units may be billed to a tenant. Upon documenting a "foreign load" problem as described above, a utility must bill the service in the landlords name because the presence of the foreign load indicates that the unit is not in fact individually metered.¹ The Bureau of Consumer Services has been working with the regulated utilities to ensure that this important new law is implemented properly. For example, the BCS has encouraged utilities to notify the landlord of the dispute so that rewiring or repiping could be a potential response.

In the case before us, the ALJ has already made findings of fact that the Complainant's meter also records the air conditioning usage for the other tenants. As a matter of law, the service may be changed to the landlord's name. After the enactment of Section 1529.1, it no longer is relevant or problematic that the utility cannot remove the foreign load directly. Moreover, no notice to the landlord is technically required, as Section 1529.1 makes it the landlord's duty to have utility service in his or her own name whenever the unit is not individually metered.

¹ "Theft of service" cases, such as when someone illegally ties into one customer's utility service, is not necessarily subject to these requirements.

While the record before is adequate to determine that foreign load exists as a matter of fact and that the utility service should be placed in the landlord's name as a matter of law, the record before us does not clearly indicate what portion of the back bill, if any, is the responsibility of the Complainant. The case should be remanded to the Office of Administrative Law Judge solely for such a determination and in order to establish any repayment terms.

THEREFORE, I MOVE THAT:

1. The Initial Decision should be remanded for findings of fact and recommendations consistent with this Motion.
2. Respondent shall place the service in the name of landlord until such time as all services provided on Complainant's meter include only services provided solely to Complainant's unit.
3. The Office of Special Assistants shall prepare an appropriate Order consistent with this Motion.

June 29, 1994
DATED

John Hanger
JOHN HANGER, COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
September 6, 1994

In Re: Z-00223698

(See letter dated 12/30/93)

David P. Boyce v. Duquesne Light Company

Billing Dispute

HEARING NOTICE

TYPE: Initial Hearing on Remand
DATE: Friday, October 14, 1994
TIME: 10:00 a.m.
LOCATION: 11th Floor Hearing Room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

PRESIDING OFFICER: Administrative Law Judge Michael A. Nemec
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Telephone: (412) 565-3550

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If you intend to file exhibits, please be advised that two copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

ATTENTION CUSTOMER: YOU MAY LOSE THE CASE IF YOU DO NOT COME TO THIS HEARING AND PRESENT FACTS ON THE ISSUES RAISED IN YOUR COMPLAINT.

If you have questions about this hearing, please call (717) 787-4972 on or before October 7, 1994.

Any questions concerning this procedure should be directed to the Administrative Law Judge.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing impaired: 1-800-654-5988.

pc: Judge Nemec
John Frazier - BPL
Consumer Advocate
Law Bureau
Norma Lewis
Judy Weaver, Scheduler
Stephen Springer
Beth Plantz
Docket Room

Certified Mail
Receipt Requested &
Reg. Mail to Complainant

APPEARANCE SHEET

ALJ HEARING REPORT

Docket No. Z-00223698

Case Name David P. Boyce v. Duquesne

Light Company _____

Location Pittsburgh

Date October 14, 1994

ALJ Nemec

Reporting Firm SARGENT'S REPORTING

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held YES NO

Hearing held YES NO

Testimony taken YES NO

Hearing concluded YES NO

Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES NO

DATE _____

Briefs to be Filed YES NO

DATE _____

BENCH DECISION YES NO

RECEIVED
 OCT 13 1994
 Office of A. L. J.
 Public Utility Commission

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REMARKS: Landlord and
Tenants to be added to
service list

DOCKETED
 OCT 31 1994

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY
 INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
REGINA M. SESTAK Telephone No. (412) 393-4113	DUQUESNE LIGHT CO. ONE OXFORD CENTRE (17-9) 301 GRANT STREET City Pittsburgh State PA Zip 15279	DUQUESNE LIGHT CO.
(412) 362-8362 -4762 Telephone No.	5608 Elsworth Ave #7 Pittsburgh Pa 15237 City Pittsburgh State PA Zip 15237	David P. Boyce
Telephone No.	City State Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES
 OR COUNSEL OF RECORD APPEAR ON BACK.

Temi L. ...
 REPORTER